

### **REMARKS**

Claims 48-73 were pending in this application. Claims 48, 50-53, 59, and 70 are amended herein. Claims 49 and 55-57 are canceled herein. Applicants expressly reserve the right to prosecute any canceled subject matter in a continuation application.

This response is submitted within two months of the mailing date of the final Office action. Applicants believe that the application will be in condition for allowance following entry of this amendment. In the unlikely event that an Advisory Action is issued and that it is not mailed until after the end of the three month shortened statutory period, then it is the Applicant's understanding that the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee will be calculated from the mailing date of the Office action.

Following entry of this amendment, claims 48, 50-54 and 58-73 are pending.

### **ALLOWABLE SUBJECT MATTER**

Applicants thank the examiner for indicating that claims 50, 57, and 70-73 are objected to but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims. Independent claim 48 has been amended to include the subject matter of dependent claims 49 and 55-57, and therefore should now be allowable. Dependent claims 51-54 and 58-69 depend from independent claim 48 and should also be allowable.

Dependent claims 50 and 70 have been rewritten in independent form incorporating all of the limitations of the claims as previously presented and should now be allowable. Dependent claims 71-73 depend from independent claim 70 and therefore should also be allowable.

### **THE OBJECTION TO THE SPECIFICATION SHOULD BE WITHDRAWN**

The specification is objected to under 37 C.F.R. §1.75(d)(1) as allegedly failing to provide proper antecedent basis for the claimed subject matter. More specifically, the Office action alleges that the specification does not provide proper antecedent basis for the term "intermediate valve element". Applicant disagrees.

Under 37 C.F.R. §1.75(d)(1), claim terms "must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by the reference to the

description.” Claim terms need not have word-for-word correspondence in the description so long as the meaning of the claim terms can be ascertained by reference to the description. Col. 9, line 62-col. 10, line 5 of the original patent describes a stator 26 and a rotor 40 in mutual fluid sealing sliding contact on a valve surface 45. The valve surface 45 can be a flat disc, cone, cylinder, or other surface of revolution (Col. 10, lines 53-55.) The valve surface 45 is intermediate the stator 36 and the rotor 40, and therefore provides proper antecedent basis for the limitation “intermediate valve element.”

Accordingly, Applicants request withdrawal of the rejection under 37 C.F.R. §1.75(d)(1).

**THE OBJECTION UNDER 37 C.F.R. § 1.175(a)(1) SHOULD BE WITHDRAWN**

The reissue oath/declaration stands rejected as defective because “the error which is relied upon to support the reissue application is not an error upon which a reissue can be based.” The action states “[a] new declaration . . . stating an error in the new claims” is required. In a telephonic conference on 6/11/07 between Applicant’s representative and Examiner Lawrence, Examiner Lawrence clarified this to mean that the declaration must explain how at least one new claim corrects an error in an original patent claim. A new Declaration is submitted herewith, which states that pending claim 48 does not contain an unnecessary limitation from claim 1 of the patent. The Declaration further states: “the original patent claims did not recite a rotary distributor valve as specifically recited in pending claim 48”. Accordingly, Applicants request withdrawal of the rejection based upon a defective oath/declaration under 37 C.F.R. § 1.175(a)(1).

**THE REJECTION UNDER 35 U.S.C. § 251 OF CLAIMS 48-73 SHOULD BE WITHDRAWN**

Claims 48-73 are rejected as allegedly being based upon a defective reissue Declaration under 35 U.S.C. § 251. As noted, a new reissue Declaration is submitted herewith. Accordingly, Applicants request withdrawal of the rejection based upon a defective reissue Declaration under 35 U.S.C. § 251.

**THE REJECTION UNDER 35 U.S.C. § 112 SHOULD BE WITHDRAWN**

Claim 51 is rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter. Claim 51 is hereby amended to overcome the rejection based upon 35 USC § 112. Specifically, the term “intermediate valve” in line 1 of claim 51 is hereby amended to read “the intermediate valve element,” as suggested by the action.

Accordingly, Applicants request withdrawal of the rejection under 35 U.S.C. §112.

**THE REJECTIONS UNDER 35 U.S.C. § 102 AND 35 U.S.C. § 103(a) SHOULD BE WITHDRAWN**

Claims 48, 49, 51-55, and 59 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Poschl *et al.* (5,584,322). Claims 48, 49, 51-56, 59-61 and 63-69 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Miwa *et al.* (4,705,627). Claims 58 and 62 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Miwa *et al.* '627 in view of Poschl *et al.* '322. Applicants traverse these rejections.

As stated above, independent claim 48 has been amended to include subject matter of claims 48 and 55-57. Dependent claim 57 was objected to for depending from a rejected base claim but would be allowable if rewritten in independent form. Thus, independent claim 48 and dependent claims 51-54 and 58-69 should now be allowable and the rejection of these claims should be withdrawn.

**SUPPORT FOR CLAIM AMENDMENTS PURSUANT TO 37 C.F.R. § 1.173(c)**

Independent claim 48 has been rewritten to include the subject matter of claims 49 and 55-57 and claims 50 and 70 have been rewritten in independent form. Because no previously unclaimed subject matter has been added to the claims by this Amendment, support for the amended claims can be found on pages 7 and 8 of the Amendment filed October 11, 2005.

**CONCLUDING STATEMENT**

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Withdrawal of the pending rejections and allowance of the claims is respectfully requested. If the Examiner believes that there are any remaining issues in the case that could be resolved by a telephonic interview, the Examiner is encouraged to contact the representative for Applicants listed below to discuss any outstanding matters.

Respectfully submitted,

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